IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WP(C).No. 13058 of 2006(D)

PETITIONER:

S.CHANDRAMOHAN NAIR,
S/O.R.SADASIVAN NAIR, AGED 56 YEARS,RESIDING AT TC NO.39/1234,
KATTU ROAD, POOJAPPURA.P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.J.HARIKUMAR

RESPONDENTS:

1. **STATE OF KERALA.,**
   REPRESENTED BY CHIEF SECRETARY, SECRETARIAT.,
   THIRUVANANTHAPURAM.

2. **THE SECRETARY,**
   FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS(CA)DEPT.,
   SECRETARIAT., THIRUVANANTHAPURAM.

3. **THE SELECTION COMMITTEE,FOR THE APPOINTMENT**
   OF MEMBERS TO KERALA STATE CONSUMER DISPUTED
   REDRESSAL COMMISSION, TVM REP.BY ITS CHAIRMAN
   (PRESIDENT OF KERALA STATE CONSUMER DISPUTES REDRESSAL
   COMMISSION, SISUVIHAR LANE, VAZHUTHACAUD,
   SASTHAMANGALAM POST, THIRUVANANTHAPURAM.

4. **THE SECRETARY, KERALA STATE CONSUMER**
   DISPUTES REDRESSAL COMMISSION, VAZHUTHACAUD,
   THIRUVANANTHAPURAM.

5. **K.V.THOMAS, 317, AKG NAGAR,**
   PERORKADA.P.O., THIRUVANANTHAPURAM - 695 005.

6. **VALSALA SARANGADHARAN, VRINDAVAN.,**
   CHANKARAMANGALAM., MUHAMMA.P.O., ALAPPUZHA.

...2/-

*ADDL.R7 TO R9 ARE IMPLEADED:

R7. LAW SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.

R8. SAINUDEEN, SECRETARY (LAW), GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.

R9. SHEELA THOMAS, SECRETARY, FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS, C.A. DEPARTMENT, SECRETARIAT, TRIVANDRUM.

*(ADDL.R7 TO R9 ARE IMPLEADED AS PER ORDER DTD. 17/07/2006 IN I.A.NO.9832/2006)

**ADDL.R10 IS IMPLEADED:

R10. SRI.ADOOR PRAKASH,
FORMER MINISTER FOR FOOD AND CIVIL SUPPLIES,
MLA QUARTERS, NO.41, NEW FLAT, THIRUVANANTHAPURAM.

**(ADDL.R10 IS IMPLEADED AS PER ORDER DTD. 25/09/2006 IN I.A.NO.13394/2006)

BY ADV. SRI.P.S.DIVAKARAN for R3
SRI.N.N.SUGUNAPALAN (SR.) for R5
SRI.ROMMOHAN G. for R6
SRI.G.P.SHINOD
SRI.JACOB P.ALEX for Addl.R10
BY SR.GOVT.PLEADER SRI. P.K.BALAN for R1,R2, R7 and R8

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON 12/03/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE LETTER DTD. 22/02/2006.

EXT.P2: COPY OF THE TELEGRAPHIC MESSAGE DTD. 01/02/2006.

EXT.P3: COPY OF THE ORDER NO.10723/CA-1/2004/F,CS&CA DTD. 11/05/2006.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): COPY OF COMPLAINT FLED BY AJAY KUMAR.B., BEFORE THE HONOURABLE LOK AYUKTA OF KERALA, THIRUVANANTHAPURAM DTD. 17/05/2006.

EXT.R5(B): COPY OF THE BIO-DATE SUBMITTED BY THE 5TH RESPONDENT ALONG WITH THE APPLICATION FOR APPOINTMENT TO THE POST OF MEMBER, STATE COMMISSION.

EXT.R5(C): COPY OF JOINING REPORT DTD. 16/05/2006 SUBMITTED BY THE 5TH RESPONDENT.

RESPONDENT'S ANNEXURES:

ANNEXURE R3(A): COPY OF THE DISSENTING NOTE.

ANNEXURE R3(B): COPY OF THE REPORT SENT TO THE NATIONAL COMMISSION.

ANNEXURE R3(C): COPY OF THE LIST HANDED OVER TO THIS RESPONDENT BY THE SECRETARY TO THE GOVERNMENT.

ANNEXURE R3(D): COPY OF THE FACING PART OF THE COVER HANDED BY THE SECRETARY OF THE GOVERNMENT.

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR,J.

WP(C)NO.13058 OF 2006-D

Judgment

This Writ Petition is filed by the petitioner, challenging the appointment of the 5th respondent as Member of the Kerala State Consumer Disputes Redressal Commission, overlooking his claim. The brief facts of the case are the following :

2. The petitioner is a practising lawyer at Thiruvananthapuram. The Kerala Government invited applications from eligible persons for appointment as Members of the Kerala State Consumer Disputes Redressal Commission, by notification dated 22.02.2006. The petitioner was one of the applicants. The selection was made by a committee, consisting of the President of the State Commission, the Law Secretary of the Government of Kerala and the Secretary to Government, Department of Food, Civil Supplies and Consumer Affairs. By Ext.P1, the petitioner was called for an interview on 28.02.2006. Later, the said interview was adjourned and held on 02.03.2006. The petitioner submits, he performed well in the interview and his name was recommended by the selection committee. But, to his surprise, the 5th respondent was appointed as the Member of the State Commission along with the 6th respondent, by the Government by Ext.P3 notification dated 11.05.2006. The petitioner submits, the 5th respondent was not recommended by the selection committee and his appointment is against the provisions of the Consumer Protection Act and the Rules framed thereunder.

According to him, the 5th respondent was selected, owing to the political pressure exerted by him. So, his appointment is vitiated by mala fides also. The main grounds raised by the petitioner in the Writ Petition are the following :

3. Ext.P3 notification is issued in violation of the Rules governing the selection and appointment. The said notification has been issued without application of mind. It is also vitiated by favouritism and nepotism. Ext.P3 is the result of colourable exercise of power. The 5th respondent was appointed in a hurry. Only a candidate recommended by the selection committee can be appointed as Member. The 5th respondent was not duly recommended by the committee. It is understood that adverse remarks were made against the said respondent by the selection committee. Though other candidates were available, the 5th respondent was selected as the favourite of the 1st respondent. At the relevant time, the 5th respondent was employed as the Private Secretary to the Finance Minister. It is a political appointment. So, he is disqualified to discharge the judicial functions of a Member of the State Commission, which are akin to that of a Civil Court. The 5th respondent's appointment is opposed to the proviso to Section 16(2) of the Consumer Protection Act, 1986. The statement in Ext.P3 that the appointment is made on the basis of the recommendation of the selection committee, is not correct. The impugned order violates the fundamental rights of the petitioner, guaranteed under Articles 14, 19 and 21 of the Constitution of India. On the above grounds, the petitioner seeks to quash Ext.P3 to the extent, it appoints the 5th respondent.

4. The Chairman of the 3rd respondent selection committee has filed a

statement, supporting the contentions of the petitioner. He has stated that in the interview, he found that the petitioner and the 6th respondent were eligible for appointment. The 5th respondent was found incompetent to discharge judicial functions. The said view has been expressed by him in a dissenting note to the proceedings of the selection committee. Copy of that dissenting note is produced as Ext.R3(a). It is also submitted that the 2nd respondent brought a cover from the office of the then Minister for Food, Civil Supplies and Consumer Affairs, containing the names of certain candidates to be selected as Members of the District Forums and also the name of the 5th respondent for selection to the State Commission. Ext.R3(c) is the said list and Ext.R3(d) is the cover in which the said list was given to him. The Chairman of the 3rd respondent committee had sent a detailed note to the Chairman of the National Commission, regarding the irregularities and political interference in the selection. The said report is produced as Ext.R3(b). The third respondent has also filed a counter affidavit, reiterating the stand taken in the statement.

5. A counter affidavit has been filed on behalf of respondents 1 and 2, supporting the impugned orders. In the said affidavit, it is stated that the 5th respondent is duly qualified to be appointed as Member of the State Commission. He has got 23 years' service in a gazetted post in the State cadre and he was formerly Additional Secretary to Government and has retired as the Director of Treasuries. It is further submitted that the Government received a panel of three names and the 5th respondent was also included in that panel. The President of the Interview Board was hostile to the 5th respondent. He displayed prejudice

against those who were not having a law degree and took special interest in the petitioner, who was a practising lawyer. The allegation of executive intervention in the selection is denied. The allegation of handing over a cover from the Minister's office to the third respondent is also denied. It is further reiterated that the selection committee recommended three candidates including the 5th respondent. So, the respondents 1 and 2 pray for dismissal of the Writ Petition. The additional 7th respondent (Law Secretary) has filed a counter affidavit, in which it is submitted that in the panel prepared by the selection committee, the 5th respondent was also included. The contention of the petitioner that the 5th respondent was not recommended by the selection committee is denied by the Law Secretary. The Law Secretary also denies the allegation about executive intervention in the selection. He also supports the 1st respondent's contention that the President was hostile to the 5th respondent during the interview. The allegation of mala fides made against the selection is denied by the said respondent.

6. The 5th respondent has also filed a counter affidavit, denying the allegations made against his selection and appointment. The said respondent has produced Ext.R5(b), which is his bio-data. He submits, the same would show that he is duly qualified for appointment. He is a post-graduate in English Language and Literature. He has all the qualifications in terms of the provisions of the Act, for appointment as Member of the Commission. The 5th respondent submits, the Chairman of the Commission was hostile towards him and he was insulted by the Chairman during the interview. His name was included in the

panel of names forwarded to the Government, as two Members of the selection committee found him suitable. The Government decided to appoint him validly. The allegations of political interference etc. are denied by him. Further, he accuses the Chairman of being biased in favour of the petitioner and against him. Another lawyer by name Mr.Ajaykumar has filed a complaint before the Lok Ayukta, alleging irregularities in the selection. In the said complaint, many confidential information regarding the selection were included. When the Lok Ayukta sought details of the source from which the complainant got them, he withdrew the petition. The 5th respondent submits, going by the provisions of the Consumer Protection Act, the Government are the appointing authority and it can make selection from among the persons recommended by the selection committee for appointment. The additional 10th respondent, who was the then Minister for Food, Civil Supplies and Consumer Affairs, has filed a counter affidavit, denying the allegations against him.

7. I heard the learned counsel on both sides. They reiterated their respective contentions mentioned above. The learned Senior Counsel Mr.N.N.Sugunapalan appearing for the 5th respondent tried to raise a technical contention that the prayer is not couched in proper words. The petitioner only challenges Ext.P3 to the extent, it appoints the 5th respondent. But, in the prayer, the petitioner challenges Ext.P3 in full. The same is improper, it is submitted. I am not impressed by the said argument. Even if the challenge is against the entire order, this Court can consider the challenge to the extent, it is sustainable.

8. The provision regarding selection is contained in Section 16(1A) of the

Consumer Protection Act. The said provision reads as follows :

> *"Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee, consisting of the following members, namely :-*
>
> *(i) President of the State Commission : Chairman*
>
> *(ii) Secretary of the Law Department of the State : Member*
>
> *(iii) Secretary in charge of the Department dealing with Consumer Affairs in the State : Member*
>
> *Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman."*

In this case, the selection was conducted by a committee, constituted in terms of the above quoted section. Since disputes were raised regarding the decision of the selection committee, files were called for by this Court. On going through the files, it is seen that the Law Secretary and the Secretary, Consumer Affairs recommended the names of Smt.Valsala Sarangadharan and Shri.K.V.Thomas, who are respectively, the 6th and 5th respondents herein, for appointment as Members of the State Commission. The Chairman of the Committee wrote a dissenting note stating that the 5th respondent is unsuitable for appointment as Member to the Commission and recommended Shri.S.Chandramohan Nair, the petitioner herein and Smt.Valsala Sarangadharan, the 6th respondent. At the

bottom of the minutes, the Chairman of the selection committee has further recorded that there was no difference of opinion among the Members of the selection committee, regarding the inclusion of the name of Shri.Chandramohan Nair. The difference of opinion was regarding the inclusion of the name of the 5th respondent in the panel, it is noted. The Government considered the recommendation and it proceeded on the footing that respondents 5 and 6 were recommended by the majority and therefore, it decided to accept that recommendation. The notes in the files would show that the objection of the Chairman of the selection committee against the 5th respondent was overruled by the Government. It was of the opinion that the Chairman was labouring under a misapprehension that the selection was being made for appointing a Judicial Member and therefore, judicial experience should be treated as one of the essential qualifications. The Government disagreed with the views of the Chairman, decided to appoint respondents 5 and 6 as Members of the Commission and issued Ext.P3 notification. The relevant portion of the order passed by the Minister in the files reads as follows :

> *"Concurs with the majority decision.*
>
> *Regarding the dissenting note, I have specific doubts that President has mistaken the selection as if for a judicial member, which is not. Both the candidates recommended by the majority members of selection committee are seen to have all necessary qualifications and experience stipulated in the Act. Competency in the field of experience is to be the criterion for selection; judicial*

experience need be considered only for the appointment of a judicial member. Misinterpretation of Section 16(i)(b) is doubted in the dissenting note. Appointment of judicial member as per statute is being taken up separately and the justifications for judicial background shall be considered then.

Appointments of the following persons for State Commission and District Forum are approved.

CDRC, Thiruvananthapuram

(1) Smt.Valsala Sarangadharan

(2) Sri.K.V.Thomas

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Sd/-
15.03.2006
.....
Minister for Food, Civil Supplies & Consumer Affairs"

9. Going by the materials in the file, it may appear that majority of the committee only recommended respondents 5 and 6 and the President of the selection committee recommended the petitioner and the 6th respondent. Going by the minutes, it is not clear, whether the petitioner's candidature is supported by respondents 2 and 7. But, in the counter affidavit filed by the 2nd respondent on behalf of respondents 1 and 2, it is admitted that the selection committee has recommended a panel of three candidates including the 5th respondent to the Government for consideration. Those three candidates are the petitioner, the 5th

respondent and the 6th respondent.

10. The 7th respondent would submit that in the panel prepared by the committee, the 5th respondent was also included, though, dissented to by the Chairman of the selection committee. So, when the contents of the file including the additional note of the Chairman of the selection committee, apart from his dissenting note and the averments in the counter affidavits of respondents 2 and 7 are read, it can be safely concluded that the petitioner's candidature was approved by all the three Members of the committee. No explanation is forthcoming, why the petitioner, who is a candidate recommended by all the three members of the committee, was overlooked and the 5th respondent, who is recommended only by two Members, was preferred, notwithstanding the fierce opposition of the Chairman of the committee against his selection. Normally, the Government are bound by the recommendation of the selection committee. Ordinarily, it should prefer a candidate, who is recommended by all the Members of the committee, to a candidate, who is recommended by only two Members. But, if the Government are not following the recommendation of the committee, it is bound to give reasons, why a candidate supported by all the Members of the Committee is overlooked and a candidate, with the support of only two members, is preferred. The Government, being the appointing authority, it must be conceded power not to accept, for valid reasons, the recommendation of the committee, in relation to a candidate. If the Government are to blindly follow the recommendation of the committee, then, the appointment, in effect will be made by the selection committee and the Government will only be a rubber stamp. I

think, the Legislature has not divested the power of appointment from the Government while making a provision for a selection committee. But, the power to deviate from the recommendation of the selection committee should be exercised sparingly and on valid grounds. In other words, the said power can be exercised only fairly and reasonably. In this case, the files do not disclose, why the Government did not prefer the petitioner. If the Government find, notwithstanding the recommendation of the committee that the petitioner is unsuitable or the 5th respondent is a better candidate, it can definitely appoint the 5th respondent, overlooking the petitioner. But, the proceedings in the files are totally silent on this aspect. The Government gave reasons to overlook the dissenting note of the Chairman and select the 5th respondent. But, no reasons are forthcoming to ignore a candidate recommended by all the three Members of the selection committee. His claim is not seen considered at all. Therefore, the order passed by the Government, appointing the 5th respondent is vitiated for failing to advert to relevant matters. It is unreasonable in the "*Wednesbury* sense". *Wednesbury unreasonableness* is explained by the learned Authors H.W.R.Wade and C.F.Forsyth in Administrative Law (Eighth edition) in the following words :

> "The principle of reasonableness has become one of the most active and conspicuous among the doctrines which have vitalised administrative law in recent years. Although the principle itself is ancient, the cases in which it was invoked were few and far between

until in 1968 the *Padfield* case (Padfield v. Minister of Agriculture, Fisheries and Food - (1968) AC 997) opened a new era. Today, on the other hand, it appears in reported cases almost every week, and in a substantial number of them it is invoked successfully. Its contribution to Administrative Law on the substantive side is equal to that of the principles of natural justice on the procedural side.

This doctrine is now so often in the mouths of judges and counsel that it has acquired a nickname, taken from a case decided twenty years before *Padfield*, the *Wednesbury* case(Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation [(1948) 1 KB 223]. The reports now are freely sprinkled with expressions like 'the *Wednesbury* principle', '*Wednesbury* unreasonableness', or 'on *Wednesbury grounds*'. As Lord Scarman explained,

'*Wednesbury* principles' is a convenient legal 'shorthand' used by lawyers to refer to the classical review by Lord Greene MR in the *Wednesbury* case of the circumstances in which the courts will intervene to quash as being illegal the exercise of administrative discretion.

One of the grounds of review, he added, is 'unreasonableness in the *Wednesbury sense*'. In the same case, Lord Bridge referred to the exercise of power 'unreasonably in what, in current legal jargon, is called the '*Wednesbury* sense'. *'Wednesbury'* is now a common and convenient label indicating the special standard of

> unreasonableness which has become the criterion for judicial review of administrative discretion."

The key passage from the Judgment of Lord Greene M.R. in **Associated Provincial Picture Houses Ltd v. Wednesbury Corporation** (1948) 1 KB 223) dealing with *unreasonable exercise of administrative discretion* reads as follows :

> "It is true that discretion must be exercised reasonably. Now, what does that mean ? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently being used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short v. Poole Corporation* (1926 Ch.66) gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another, it is taking into consideration extraneous matters. It is so

unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

(emphasis supplied)

11. As stated earlier, while exercising the discretion in making selection from the panel of names recommended by the committee, the petitioner's claim was not considered by the Government. So, the decision is suffering from the vice of *'Wednesbury unreasonableness'*. Accordingly, Ext.P3, to the extent, it appoints the 5th respondent as a Member of the State Commission, is quashed. The Government are directed to consider the claim of the petitioner also and to take a fresh decision as to whether the petitioner or the 5th respondent should be appointed, within two months from the date of receipt of a copy of this Judgment. It is further ordered that the 5th respondent can continue in office till the Government take a fresh decision in the matter as directed above.

The Writ Petition is allowed as above. No costs.

12.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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